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RadNet Management, Inc. and National Union of Healthcare Workers. Case 21–CA–243181

August 27, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN
AND EMANUEL

This is a refusal-to-bargain case in which the Respondent, RadNet Management, Inc., is contesting the Union’s certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on June 11, 2019, by the National Union of Healthcare Workers (the Union), the General Counsel issued a complaint on June 17, 2019, amended on June 28, 2019, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Union following the Union’s certification in Case 21–RC–226166. (Official notice is taken of the record in the representation proceeding as defined in the Board’s Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer and an answer to the amendment to the complaint, admitting in part and denying in part the allegations in the complaint, as amended.

On July 15, 2019, the General Counsel filed a Motion for Summary Judgment. On July 24, 2019, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response to the Notice to Show Cause and opposition to the Motion for Summary Judgment, and a first amended answer to the complaint, as amended, newly asserting affirmative defenses. The General Counsel filed a reply to the Respondent’s opposition.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain but contests the validity of the Union’s certification of representative based on its objections to the election in the underlying representation proceeding.¹

¹ In its answer, the Respondent denies the allegations in complaint par. 9 that since April 8, 2019, the Respondent has failed and refused to recognize and bargain with the Union. However, in its answer to the amendment to the complaint, the Respondent admits the allegations in pars. 8(a) and (b) that by letter dated April 8, 2019, emailed to the Respondent, the Union requested that it recognize and bargain with the

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor has it established any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).² Accordingly, we grant the Motion for Summary Judgment.³

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent RadNet Management, Inc. has been a corporation with facilities located throughout southern California, where it has been engaged in the operation of administering diagnostic imaging services, including an operation in Garden Grove, California.

During the 12-month period ending on August 31, 2018, the Respondent, in conducting its operations described above, derived gross revenues in excess of \$500,000, and purchased and received at its southern

Union as the exclusive bargaining representative of Unit E. It further admits that since that date, it has not responded to the Union’s request. Accordingly, we conclude that the Respondent’s denial of complaint par. 9 does not raise any issue warranting a hearing.

The Respondent also denies par. 6 of the complaint, which sets forth the appropriate unit. The unit issue, however, was fully litigated and resolved in the underlying representation proceeding. Accordingly, the Respondent’s denial of the appropriateness of the unit does not raise any litigable issue in this proceeding.

² In its response to the Notice to Show Cause, the Respondent argues that the Board should deny the General Counsel’s Motion, citing, among other cases, *St. Francis Hospital*, 271 NLRB 948, 949 (1984) (Board reconsidered and vacated its earlier decision in the underlying representation proceeding and formulated a revised approach to health care employee units), and *Sub-Zero Freezer Co.*, 271 NLRB 47, 47 (1984) (Board reconsidered and reversed its earlier decision in the underlying representation proceeding). *St. Francis Hospital* and *Sub-Zero Freezer* are two of a limited number of cases in which the Board has departed from the rule that, in a certification-testing unfair labor practice case, issues that had been presented to and decided by the Board in a prior, related representation case cannot be relitigated and will not be reconsidered. Having reviewed the facts and arguments presented by the Respondent in its response to the Notice to Show Cause, we find no basis for departing from our longstanding rule or disturbing our order denying review of the Regional Director’s decision in the underlying representation case. See *Memorial Hospital of Salem County*, 357 NLRB No. 119, slip op. at 1–2 fn. 5 (2011) (not reported in Board volumes), *enfd. sub nom. Salem Hosp. Corp. v. NLRB*, 808 F.3d 59 (D.C. Cir. 2015); see also *Local 340, New York New Jersey Regional Joint Board*, 365 NLRB No. 61, slip op. at 3 fn. 6 (2017).

³ The Respondent’s request that the complaint, as amended, be dismissed is therefore denied.

California facilities goods valued in excess of \$50,000 directly from points located outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.⁴

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the representation election held on October 25, 2018, the Union was certified on February 19, 2019, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

Unit E: Garden Grove Advanced Imaging

Included: All full-time, regular part-time, and per-diem Technological employees employed by the Employer at Garden Grove Advanced Imaging, currently located at 9191 Westminster Avenue, Suite 105, Garden Grove, CA 92844.

Excluded: All other employees, service employees, office clerical employees, confidential employees, professional employees, physicians, already represented employees, managerial employees, guards, and supervisors as defined in the Act.

On June 12, 2019, the Board denied the Respondent's request for review of the Union's certification. The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. *Refusal to Bargain*

By letter dated April 8, 2019, emailed to the Respondent, the Union requested that the Respondent recognize and bargain collectively with it as the exclusive collective-bargaining representative of the unit. The Respondent did not respond to the Union's request and since that date has failed and refused to recognize and bargain with the Union.

We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain

⁴ In its answer to the complaint, the Respondent states that it lacks sufficient knowledge or information sufficient to form a belief as to whether the Union is a labor organization under Sec. 2(5) of the Act. In the underlying representation proceeding, however, the Respondent stipulated that the Union is a labor organization within the meaning of Sec. 2(5). Therefore, we find that the Respondent's denial does not raise an issue warranting a hearing. *American Service & Supplies*, 340 NLRB 239, 239 fn. 2 (2003).

with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since April 8, 2019, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning on the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf'd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enf'd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

ORDER

The National Labor Relations Board orders that the Respondent, RadNet Management, Inc., Garden Grove, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with the National Union of Healthcare Workers (the Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

Unit E: Garden Grove Advanced Imaging

Included: All full-time, regular part-time, and per-diem Technological employees employed by the Employer

at Garden Grove Advanced Imaging, currently located at 9191 Westminster Avenue, Suite 105, Garden Grove, CA 92844.

Excluded: All other employees, service employees, office clerical employees, confidential employees, professional employees, physicians, already represented employees, managerial employees, guards, and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Garden Grove, California, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 8, 2019.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 21 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 27, 2019

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with National Union of Healthcare Workers (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following appropriate bargaining unit:

Unit E: Garden Grove Advanced Imaging

Included: All full-time, regular part-time, and per-diem Technological employees employed by us at Garden Grove Advanced Imaging, currently located at 9191 Westminster Avenue, Suite 105, Garden Grove, CA 92844.

Excluded: All other employees, service employees, office clerical employees, confidential employees, professional employees, physicians, already represented employees, managerial employees, guards, and supervisors as defined in the Act.

RADNET MANAGEMENT, INC.

The Board's decision can be found at www.nlr.gov/case/21-CA-243181 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

